

Exhibit 2

Contains Confidential Portions

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,)
MARVEL CHARACTERS, INC.,)
and MVL RIGHTS, LLC,)
)

Plaintiffs,)

vs.)

Case No.

10-141-CMKF

LISA R. KIRBY, BARBARA J.)
KIRBY, NEAL L. KIRBY, and)
SUSAN N. KIRBY,)
)

Defendants.)

-----)

REVISED

PARTIALLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER
(Pages 66 through 70)

VIDEOTAPED DEPOSITION OF LAWRENCE LIEBER

New York, New York

January 7, 2011

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 35338

Contains Confidential Portions

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January 7, 2011

Partially confidential videotaped deposition of LAWRENCE LIEBER, held at Weil Gotshal & Manges, 767 Fifth Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

Contains Confidential Portions

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A P P E A R A N C E S:

WEIL, GOTSHAL & MANGES

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767 Fifth Avenue

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BY: RANDI W. SINGER, ESQ.

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TOBEROFF & ASSOCIATES

Attorneys for the Defendants

2049 Century Park East, Suite 2720

Los Angeles, California 90067

BY: MARC TOBEROFF, ESQ.

ALSO PRESENT:

ELI BARD, Marvel Entertainment

MATTHEW SMITH, Legal Video Specialist

1 L. Lieber

2 Q. You mentioned that you have never been
3 deposed in a lawsuit before.

4 A. No.

5 Q. Have you ever submitted a, what we
6 call a declaration or affidavit in connection
7 with a lawsuit?

8 A. No.

9 Q. Do you know what a declaration is?

10 A. I would imagine it's a statement of
11 some kind that you sign or you write. And so,
12 no, not that I recall.

13 Q. Did you -- were you ever interviewed
14 in connection with any lawsuit previously?

15 A. No. No. The only, and this isn't
16 interviewed, but, no, no, no, no, no.

17 Q. Moving on to your -- a new subject --
18 career at Marvel, you testified that you began
19 doing freelance work for Marvel in approximately
20 June 1958; is that correct?

21 A. Yes.

22 Q. And you were writing scripts?

23 A. Yes.

24 Q. And those scripts were purchased by
25 Marvel?

1 L. Lieber

2 A. Yes.

3 Q. You also at times did artwork?

4 A. Yes. Yes.

5 Q. And that artwork was also purchased by
6 Marvel?

7 A. Yes.

8 MS. SINGER: Objection to form.

9 Assumes facts.

10 And now this is the part where I ask
11 you same thing he asked you: If you can
12 just give a pause so if I have to jump in
13 with an objection.

14 THE WITNESS: Oh, I didn't -- I'm
15 sorry.

16 MS. SINGER: That's okay.

17 THE WITNESS: I didn't hear. I'm --

18 MS. SINGER: No worries. No worries.

19 THE WITNESS: I'm trying to think of
20 the answers so much and I -- yeah, I'll
21 wait.

22 Q. During all the time you did work with
23 Marvel, did you have a written contract with
24 Marvel?

25 A. No.

1 L. Lieber

2 MS. SINGER: Good work. Good pause.

3 Q. When you did free -- when you did
4 freelance work between 1958 and 1964, you did
5 not have a written contract, correct?

6 A. No.

7 Q. Actually, I said "correct," so your --

8 A. Yes, it's correct.

9 MS. SINGER: You have to give a pause
10 so he can object to his own questions too.

11 Q. Now, when you submitted your freelance
12 work to Marvel, whether it's script or artwork,
13 was it -- was it your understanding that Marvel
14 was obligated to purchase that material from
15 you?

16 MS. SINGER: Objection. Assumes
17 facts.

18 A. My understanding they were not
19 obligated.

20 Q. And was it your understanding that
21 when they did buy your work, that they owned all
22 rights to it?

23 MS. SINGER: Objection. Assumes
24 facts.

25 A. Yes.

1 L. Lieber

2 Q. And that's because they had purchased
3 it from you?

4 MS. SINGER: Objection.

5 A. Yes.

6 Q. Now, during the period when Marvel was
7 buying your work, did you submit any work,
8 whether scripts or artwork, to any other
9 publishers?

10 A. No.

11 Q. Do you know of other, any other
12 writers or artists who are working freelance, on
13 a freelance basis with Marvel, who at that time
14 were also submitting freelance work to other
15 comic book publishers?

16 A. I -- I'm not certain. I know there
17 were artists who work for other companies. I'm
18 not certain whether it was at the same time they
19 were working for Marvel. There were artists and
20 writers who had worked -- I was almost the only
21 one in the profession who couldn't work for
22 another company, which, in this case, the most
23 likely one would have been DC, because Stan was
24 my brother. And -- should I go on?

25 Q. Please.

1 L. Lieber

2 the art director wanted to keep him, he had to,
3 you know, give him -- give him a little more.

4 Q. Now, again, during the period 1958 to
5 '65, where were you living at the time?

6 A. I was living in Tudor City.

7 Q. And is that where you did your
8 freelance work?

9 A. Yes. I had a furnished room in
10 somebody's apartment. I did my freelance work
11 there.

12 Q. And did you pay for your own supplies,
13 whatever they were?

14 A. I believe so, yes.

15 Q. So your own paper and pencils and
16 writing implements?

17 A. Yeah, I -- yeah, I guess.

18 Q. Did you work on a typewriter?

19 A. Yes.

20 Q. And did you pay for that typewriter?

21 A. Yes, I -- I remember I went with Stan
22 and I bought it once. We went to a typewriter
23 store on Lexington Avenue and I paid for it,
24 sure.

25 Q. Now, as a freelancer, if your work was

1 L. Lieber

2 of times?

3 A. No. Because if I had been, I might
4 not have been so concerned about my expenses.

5 Q. Now, when you were paid by the page
6 for the purchase of your work, did they take out
7 any taxes from your checks?

8 MS. SINGER: Objection.

9 A. No.

10 Q. Did they -- did Marvel provide you
11 with any paid vacation?

12 A. No.

13 Q. None whatsoever?

14 A. No. None whatsoever.

15 Q. For all the time you worked there?

16 A. That I did freelance work for them?
17 No.

18 Q. Did Marvel provide you with any health
19 insurance or health benefits during the time you
20 worked there?

21 A. Yes.

22 Q. When was that?

23 A. Years later.

24 Q. So not in the period 1958 to 1965?

25 A. No. No. No. No. I don't think so,

1 L. Lieber

2 no. It was later on that they gave
3 freelancers -- it was very nice. I had medical
4 benefits and I had dental benefits, but then my
5 freelance work, I was doing less, and they said
6 they had raised the amount -- you had to do a
7 certain amount of work to qualify for it, earn a
8 certain amount of money, and I didn't qualify so
9 I lost that and that was it.

10 Q. Now, you mention that you wrote the
11 story, the first Thor story?

12 A. Yes.

13 Q. And that's the story that appeared in
14 Journey Into Mystery No. 83?

15 A. I don't know the number, but yes, it
16 was in Journey Into Mystery.

17 Q. Are you aware that, prior to that
18 first -- and that was illustrated by Jack Kirby,
19 correct?

20 A. I believe so.

21 Q. That story?

22 A. Yes.

23 Q. Are you aware that, prior to that
24 first Thor story, Jack Kirby had actually done
25 stories featuring the same Norse god with a

1 L. Lieber

2 A. Yes.

3 Q. Moving to a different subject, you
4 testified earlier that it was your recollection
5 that there were legends on the back of checks
6 you received from Marvel for your freelance
7 work?

8 A. Writing on the back, yes.

9 Q. And we'll just call that writing
10 legends for purposes --

11 A. Okay, I didn't know the term. Yeah,
12 something printed.

13 Q. And is it fair to say you don't know
14 when those legends first started appearing?

15 MS. SINGER: Objection.

16 A. I think I had them at the very
17 beginning when I started writing. I think I had
18 them then because I -- I don't recall thinking
19 there was something new, but perhaps, perhaps
20 they weren't there. So I don't really know.

21 Q. And was it your understanding that the
22 import of the writing on the back of these
23 checks was that by signing the check and
24 accepting payment for your work, you were
25 transferring over to Marvel all rights in your

1 L. Lieber

2 work?

3 MS. SINGER: Objection.

4 A. Yes, it was my understanding.

5 Q. And do you recall -- strike that. On
6 the checks you received for your freelance work,
7 did they have language stating that your work
8 was work made for hire?

9 A. No. No.

10 Q. When is the first time you heard the
11 phrase "work made for hire," if any?

12 A. The first time. I don't know which
13 came first, but I've only heard it recently in
14 the last year or so, once from you using it to
15 me in a conversation, and then I -- I looked up
16 the case out of curiosity on the Internet and
17 they were talking about it and they mentioned it
18 as being an important thing or was it work for
19 hire or not.

20 And then there was -- maybe not there,
21 but I know I -- maybe it was -- it was there and
22 also in the New York Times they had an article
23 about this case some time ago, and in the
24 article they mentioned again what it was about.
25 I -- I don't understand the things very well,

1 L. Lieber

2 but in each case I think I -- I heard the
3 expression "work for hire."

4 Q. And when you first heard that
5 expression "work for hire" recently before doing
6 any research, did you know what it meant?

7 A. No. I'm still not sure, and it's been
8 explained to me and I'm still uncertain.

9 (Lieber Exhibit 5, reduced copies of
10 six large pages of drawings by Jack Kirby
11 that were in the possession of Lawrence
12 Lieber and furnished in response to
13 subpoena, marked for identification, as of
14 this date.)

15 Mr. TOBEROFF: I'd like to mark the next
16 exhibit as Lieber Exhibit 5. Lieber Exhibit
17 5 are reduced copies of six large pages of
18 drawings by Jack Kirby that were in the
19 possession of Mr. Lieber and furnished to us
20 in response to his subpoena.

21 Q. Mr. Lieber, do you recognize what has
22 been marked as Lieber Exhibit 5?

23 A. Yes.

24 Q. Can you tell me what these drawings
25 are?

1 L. Lieber

2 A. Well, this must have been a Hulk story
3 and I have the originals at home. I don't
4 remember when I first got them. I don't
5 remember the year, but I obtained them when they
6 were discarded.

7 Q. Can you tell me how you came into
8 possession specifically of these drawings?

9 A. They -- I was in the office, the
10 Marvel office. It probably was at -- no, it
11 must have been at the -- on 57th Street when
12 they were there on Madison, and Jack Kirby came
13 out of Stan's office from -- and from the
14 direction of Stan's office. He may, probably,
15 he had come out of Stan's office, and he seemed
16 upset. And he took the drawings, he had these
17 drawings, he took them and he tore them in half
18 and he threw them in a trash can, a large trash
19 can.

20 And I, since I was such a big fan of
21 his, I knew that at the end of the day, they
22 would be discarded, you know, and would be
23 trash. And I -- I saw it as an opportunity to
24 have some of his originals to keep, to look at
25 and study, and so I took them out of the trash

1 L. Lieber

2 can.

3 And there were other people in the
4 office, but nobody else seemed to have noticed
5 this, which I was glad about, and I just took
6 them, walked over to where I was sitting and put
7 them in my case. And I took them home and I
8 taped them together, you know, I taped them all,
9 and I kept them and I've kept them all these
10 years to look at them and, as I say, to study
11 them.

12 Q. If you look at the center of the page,
13 you see a line going through the center of the
14 first page, the third, fourth, fifth and sixth
15 pages?

16 A. Yeah.

17 Q. Do you see that line?

18 A. Yes, I see the line.

19 Q. Is that because those pages were
20 originally ripped in half?

21 A. Yeah, that's where it was ripped and I
22 have tape on them.

23 Q. And the black marks on the left and
24 right-hand margins --

25 A. Scotch tape.

1 L. Lieber

2 Q. -- in this photostat copy are scotch
3 tape?

4 A. Yes.

5 Q. Have you scotch-taped them together?

6 A. Yes.

7 Q. What was your understanding of why or
8 your impression of why Jack Kirby was upset when
9 he tore these up and threw them in the trash?

10 A. I didn't know. I didn't speak to him.
11 I assumed, seeing a man walk out of the office
12 and tear his artwork up, that -- or I thought
13 probably they were rejected and he was annoyed
14 or disgusted. I didn't, you know, and I didn't
15 know what it was. I didn't hear anything, so I
16 just -- that was my first assumption, but I
17 didn't know.

18 (Lieber Exhibit 6, an excerpt from
19 Jack Kirby Collector Forty-One, marked for
20 identification, as of this date.)

21 MR. TOBEROFF: I would like to mark as
22 Lieber Exhibit 6 an excerpt from Jack Kirby
23 Collector Forty-One.

24 A. Oh, yes.

25 Q. If you would please turn to page 71.